

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

KINDER MORGAN, INC.,) DOCKET NO. FC-1319
)
Complainant,)
)
v.) ORDER DENYING MOTION TO
) DISMISS
CITY OF HASTINGS, NEBRASKA, a)
municipal corporation, and its)
municipal utilities department,)
)
Respondent.) Entered: August 31, 2004

BY THE COMMISSION:

On June 14, 2004, Kinder Morgan, Inc. (KM) filed a formal complaint against the City of Hastings, Nebraska (Hastings) alleging dual piping of natural gas service in and around the city. KM alleges that Hastings' installation of new natural gas piping to current KM customers in recently annexed portions of the city violates Neb. Rev. Stat. § 66-1852 (1) of the State Natural Gas Regulation Act¹ prohibiting installation of duplicative and redundant natural gas lines.

On July 1, 2004, Hastings filed a Motion to Dismiss (Motion) alleging that the Commission lacks subject matter jurisdiction over KM's formal complaint. In sum, Hastings alleges that as a municipality, Hastings is excluded from the Commission's jurisdiction pursuant to Neb. Rev. Stat. § 66-1804(1) to regulate "natural gas public utilities" as defined in Neb. Rev. Stat. § 66-1802(11). Oral argument on the Motion was held on August 18, 2004, in Hastings, Nebraska.

O P I N I O N A N D F I N D I N G S

The Commission is specifically directed to "enforce the State Natural Gas Regulation Act."² Neb. Rev. Stat. § 66-1852(1) states,

(1) Except as provided in sections 57-1301 to 57-1307 as those statutes govern jurisdictional utilities and metropolitan utilities districts, no person, public or private, shall extend duplicative or redundant natural gas mains or other natural gas services into any area which has existing natural gas utility infrastructure or where a contract has been entered into for the placement of natural gas utility infrastructure.

¹ Neb. Rev. Stat. §§ 66-1801, et seq. (2003 Supp.).

² Neb. Rev. Stat. § 75-118.

This section's prohibition regarding the installation of duplicative or redundant natural gas mains or other natural gas services is not limited to "natural gas public utilities", but extends to any "person, public or private".

The Commission's general jurisdiction regarding the State Natural Gas Regulation Act is set forth in Neb. Rev. Stat. §66-1804 (2003 Supp.):

- (1) The Commission shall have the full power, authority, and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction. Except as provided in the Nebraska Natural Gas Pipeline Safety Act of 1969, and notwithstanding any other provision of law, such power, authority, and jurisdiction shall extend to, but not be limited to, all matters encompassed within the State Natural Gas Regulation Act and sections 57-1301 and 57-1307.
- (2) The State Natural Gas Regulation Act and all grants of power, authority, and jurisdiction in the act made to the commission shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon the commission.³

Generally, the Commission lacks jurisdiction to regulate natural gas utilities owned or operated by a city or a metropolitan utilities districts.⁴ However, as previously stated, the prohibition against the installation of duplicative or redundant natural gas mains or other natural gas services refers to "no person, public or private" and is not limited to "natural gas public utilities" as defined in § 66-1802 and constitutes an exception to the general jurisdiction granted to the Commission.

A plain reading of the applicable statutes indicates that the Commission has limited authority to regulate such city owned or operated natural gas utilities relating to the prohibition against duplicative or redundant natural gas mains or other

³ Neb. Rev. Stat. §66-1804 (2003 Supp.)

⁴ Neb. Rev. Stat. § 66-1802(11) stating "Natural gas public utility does not mean a natural gas utility owned or operated by a city or a metropolitan utilities district."

natural gas services set forth in § 66-1852(1). Such a reading is also consistent with the legislative policy against duplicative piping.

O R D E R

IT IS THEREFORE ORDERED by the Commission that the Motion to Dismiss is denied.

MADE AND ENTERED at Lincoln, Nebraska, this 31st day of August, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director